

<b>APPLICATION NO.</b>	<a href="#">P15/V1940/FUL</a>
<b>APPLICATION TYPE</b>	FULL APPLICATION
<b>REGISTERED</b>	13.8.2015
<b>PARISH</b>	HARWELL
<b>WARD MEMBER(S)</b>	Janet Shelley Reg Waite
<b>APPLICANT</b>	Mr Richard Womersley-Smith
<b>SITE</b>	Orchard Way Harwell, OX11 0LH
<b>PROPOSAL</b>	Removal of conditions 5 (travel information), 6 (OCC Manual for Streets), 8 (refuse), 12 (non-motorised users audit), 13 (biodiversity offsetting scheme), 14 (retention of trees), 15 (windows to Plots 1 & 6) and 17 (footway), and variation of condition 3 (drawing numbers) of planning permission P14/V2286/O.
<b>AMENDMENTS</b>	Outline application for a residential development of up to 9 dwellings, with all matters reserved except for access.
<b>GRID REFERENCE</b>	None
<b>OFFICER</b>	448806/189152 Shaun Wells

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## 1.0 SUMMARY

- The application seeks to vary condition 3 of planning permission P14/V2286/O and remove conditions 5, 6, 8, 12, 13, 15 and 17.
- The conditions have been reassessed against the tests outlined in paragraph 206 of the NPPF
- It is considered that the application is acceptable as the conditions would not fully meet the tests

## INTRODUCTION

- 1.1 This application is made under Section 73 of the Town and Country Planning Act 1990. The application seeks to vary condition 3 of planning permission P14/V2286/O and also to remove 8 of a total of 18 conditions from that permission.
- 1.2 The site lies immediately adjacent to the built up area of Harwell village. The site has not been developed previously and is covered in grass, shrubs and trees. There is an informal path through the site to a walkway over the western boundary however this is not a public right of way. The site is relatively level and is bounded by residential gardens on three sides (north, east and south), and by two rows of mature and semi-mature trees, a land drainage ditch and agricultural fields to the rear (west).
- 1.3 The existing dwellings on Orchard Way comprise a mixture of bungalows and two storey houses, and the character of the immediate area is residential. There is a school to the north of the site and one of the accesses to that school is from Orchard Way some 40 metres to the north of the site entrance.
- 1.4 The Vale of White Horse Local Plan 2011 identifies the site as being within the Area of Lowland Vale (Policy NE9), where development is not permitted if it would have an adverse impact on the landscape, particularly on the long open views within or across

an area.

- 1.5 The site has no special land use designations. A group 95 alder trees on the site are mature or semi-mature and at the time of writing this report a group Tree Preservation Order was in the process of being applied to these trees.

- 1.6 A site location plan is **attached** at appendix 1.

## 2.0 PROPOSAL

- 2.1 The application does not seek to change the detail of that proposed and approved by the Planning Committee 18<sup>th</sup> December 2014.
- 2.2 The Planning merits of the proposal are therefore not considered in this report as a positive determination on the proposal has already been made by the Planning Authority.
- 2.3 The application now seeks to vary the permission, through removal of an indicative layout plan 2867.101 Rev A (**attached** Appendix 2) from Condition 3 of the permission, which stated:-

3) That the development hereby approved shall be carried out in accordance with the details shown on the following approved plans, LOC-001, JNY8144-04 and 2867.101 Revision A, except as controlled or modified by conditions of this permission.”

- 2.4 The current application also seeks removal of conditions 5, 6, 8, 12, 13, 14, 15 and 17 of the permission. Each of these is considered in paragraph 6 of the report. The applicant contests that these conditions fail to meet the normal tests as set out in paragraph 206 of the NPPF to be considered by the Local Planning Authority in the application of conditions.

## 3.0 SUMMARY OF CONSULTATIONS & REPRESENTATIONS

- 3.1 Harwell Parish Council – Object to the removal of conditions and recommends a proper renegotiation between Vale and applicant - with an opportunity for the PC to comment on the outcome. The Council particularly objects to removal of condition 17. Please also note that a condition in the minutes of the Vale Planning Committee about provision of parking spaces was not included in the Vale condition letter. This should be rectified.
- 3.2 Highways OCC- Advise removal of highways conditions as follows:-

### *Con 5*

*Prior to the first occupation of the development hereby approved, Travel Information Packs are to be developed for each dwelling and approved in writing by the Local Planning Authority in consultation with the Highway Authority.*

*Reason: To promote the use of sustainable forms of transport in accordance with the NPPF.*

When this outline application originally came to us in October last year for consideration it was for a development of between 10 and 25 dwellings.

The application is now for 9 dwellings and our adopted guidance ‘*Transport for New Developments: Transport Assessments and Travel Plans*’ specifies that a Travel

Information Pack is required for developments of 10 dwellings and above. As the number of dwellings clearly falls below this threshold there is no requirement for a travel information pack and I would recommend that this condition 5 should be removed.

*Con 6*

*The detailed internal layout shall accord with OCC Manual for Streets principles, including servicing/emergency vehicle access/egress, and constructed to adoptable standards, unless otherwise approved in writing by the Local Planning Authority.*

*Reason: To ensure the development provides for adequate parking and vehicular access in accordance with Policy DC5 of the adopted Vale of White Horse Local Plan and the NPPF.*

I am afraid I find this condition totally meaningless and irrelevant to the outline application (all matters reserved except for access). There is no such document OCC Manual for Streets and a condition is clearly not precise if it refers to principles. Whilst adoptable standards are preferable there is no justification from a planning perspective. The reason relates to matters which again I suggest are not for consideration at this outline stage. I recommend the condition is removed.

*Con 8*

*Unless otherwise approved in writing by the Local Planning Authority, prior to the commencement of the development details of a refuse collection point next to Orchard Way shall be submitted to and approved in writing by the Local Planning Authority.*

*Reason: To ensure adequate provision for the management and collection of waste in accordance with Policy DC7 of the adopted Vale of White Horse Local Plan.*

I suggest the refuse collection is not relevant to the outline application and the condition is removed.

*Con 12*

*Prior to the commencement of the development hereby approved, a non-Motorised Users Audit (NMUA) to be submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority.*

*Reason: To identify pedestrian and cycle connectivity to the amenities in the village and promote sustainable forms of transport in accordance with the NPPF.*

A rather odd condition as it achieves nothing other than provision of a document. It would not, as the reason suggests, promote sustainable forms of transport. NMUAs are used to inform travel plans and advise appropriate improvements that may be required. I recommend the condition is removed.

*Con17*

*Unless otherwise agreed in writing by the Local Planning Authority, prior to the first occupation of the development hereby approved, a footway shall be provided through the site linking with the informal path along the western boundary of the site to the satisfaction of the Local Planning Authority.*

*Reason: In the interests of pedestrian safety, site permeability, and to ensure adequate foot access through the site is provided for local residents and school children in accordance with Policies DC1 and DC5 of the adopted Vale of White Horse Local Plan.*

I am not sure of the origin of this condition and struggle to see how it is necessary or in the interests of pedestrian safety, albeit I have not made a site inspection. I recommend the condition is removed.

- 3.3 Countryside Officer VOWH made the following comment with regard to condition 13:- I have reviewed the comments I made on the application and I am of the view that the condition that was attached is not warranted. The ecological impacts of the scheme could be dealt with through detailed design at the reserved matters application. You will note that my initial comments on the application do not suggest that a biodiversity offsetting condition is required. The latter email from me regarding an offsetting condition I believe followed a request for the wording of the condition from the planning officer.

- 3.4 Forestry Team (Vale of White Horse) is of the view that condition 14 was worded specifically to see that the retention of the trees was accommodated within a subsequent detailed application. The Forestry Team remain of the view that the condition will enable the council to control this and that removing it will enable the applicant to increase the number of plots at a detailed stage to the detriment of the visual amenity afforded by the existing trees. The Forestry Team do not share the applicant's view that the landscape character of the site will not be significantly affected by the loss of the boundary trees and the fact that the applicant is struggling to see where a view commensurate of that landscape character can be obtained is readily resolved by a tour around the environs of the site. Subsequent to these comments the Forestry Officer has advised that a group Tree Preservation Order is soon to be placed on the trees to the rear of the site.

- 3.5 Neighbour Objections:- 1 objection has been received from the occupier of 33 Orchard Way in summary as follows:-  
Objects to the removal of condition 15 in particular and all other conditions should go through a proper consultation. Invasion of privacy would result.

#### 4.0 **RELEVANT PLANNING HISTORY**

- 4.1 [P14/V2286/O](#) - Approved (12/02/2015)

Outline application for a residential development of up to 9 dwellings, with all matters reserved except for access (as amended by revised application form, drawings 2867.100 and JNY8144-04, and agents email dated 24-11-14).

[P14/V0394/PEJ](#) - Other Outcome (03/04/2014)

pre-app site meeting to consider residential development of between 10 and upto 25 dwellings

[P86/V1446/COU](#) - Approved (04/09/1986)

Change of use from agricultural to garden to provide enlarged gardens. Land to rear to 37-43 Orchard Way, Harwell, Oxon.

#### 5.0 **POLICY & GUIDANCE**

- 5.1 The proposal was considered to be in general accordance with local and national policy under the initial application P14/V2286/O. There is no material change to the proposal.
- 5.2 Given that there is no change to the scheme proposed, the main guidance to consider with regard to this application is therefore limited to that in the NPPF and Planning Practice Guidance with regard to the imposition of planning conditions.
- 5.3 Paragraph 203 of the NPPF states that, "*Local planning authorities should consider*

*whether otherwise unacceptable development could be made acceptable through the use of conditions” “*

5.4 Paragraph 206 of the NPPF states that, *“Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects”*.

5.5 Planning Practice Guidance provides additional advice on the “six tests” as follows:-

<b>TEST</b>	<b>KEY QUESTIONS</b>
<b>Necessary</b>	<p><b>Will it be appropriate to refuse planning permission without the requirements imposed by the condition?</b></p> <ul style="list-style-type: none"> <li>• A condition must not be imposed unless there is a definite planning reason for it, i.e. it is needed to make the development acceptable in planning terms.</li> <li>• If a condition is wider in scope than is necessary to achieve the desired objective it will fail the test of necessity.</li> </ul>
<b>Relevant To Planning</b>	<p><b>Does the condition relate to planning objectives and is it within the scope of the permission to which it is to be attached?</b></p> <ul style="list-style-type: none"> <li>• A condition must not be used to control matters that are subject to specific control elsewhere in planning legislation (for example, advertisement control, listed building consents, or tree preservation).</li> <li>• Specific controls outside planning legislation may provide an alternative means of managing certain matters (for example, works on public highways often require highways’ consent).</li> </ul>
<b>Relevant to the Development Permitted</b>	<p><b>Does the condition fairly and reasonably relate to the development to be permitted?</b></p> <ul style="list-style-type: none"> <li>• It is not sufficient that a condition is related to planning objectives: it must also be justified by the nature or impact of the development permitted.</li> <li>• A condition cannot be imposed in order to remedy a pre-existing problem or issue not created by the proposed development.</li> </ul>
<b>Enforceable</b>	<p><b>Would it be practicably possible to enforce the condition?</b></p> <ul style="list-style-type: none"> <li>• Unenforceable conditions include those for which it would, in practice, be impossible to detect a contravention or remedy any breach of the condition, or those concerned with matters over which the applicant has no control.</li> </ul>

<p><b>Precise</b></p>	<p><b>Is the condition written in a way that makes it clear to the applicant and others what must be done to comply with it?</b></p> <ul style="list-style-type: none"> <li>• Poorly worded conditions are those that do not clearly state what is required and when must not be used.</li> </ul>
<p><b>Reasonable in all other respects</b></p>	<p><b>Is the condition reasonable?</b></p> <ul style="list-style-type: none"> <li>• Conditions which place unjustifiable and disproportionate burdens on an applicant will fail the test of reasonableness.</li> <li>• Unreasonable conditions cannot be used to make development that is unacceptable in planning terms acceptable.</li> </ul>

**6.0 PLANNING CONSIDERATIONS**

6.1 The material considerations of the proposal do not differ from that proposed and approved under the previous application P14/V2286/O. The only issues to consider therefore are as follows:-

- 1) Whether the Variation of Condition 3 to remove the illustrative plan 2867.101 Rev A is acceptable.
- 2) Whether the removal of conditions 5, 6, 8, 12, 13, 14, 15 and 17 of the permission is acceptable.
- 3) Whether there is now the Local Planning Authority would be in a reasonable position to request an element of affordable housing provision (following changes in guidance since the initial application was approved).

Each of the above is considered below in turn.

**1)Whether the Variation of Condition 3 to remove the illustrative plan 2867.101 Rev A is acceptable?**

6.2 Condition 3 states:-

*“That the development approved shall be carried out in accordance with the details shown on the following approved plans, LOC-01, JNY8144-04 and 2867.101 Revision A, except as controlled or modified by conditions of this permission”.*

Reason: To secure the proper planning of the area in accordance with Development Plan Policies.

6.3 It is understood that the illustrative masterplan was submitted at the time at the request of the Planning Officer dealing with the application in order to indicate how 9 dwellings could be accommodated on the site. This is usual practice with outline applications particularly should there be constraints to consider, whether there is any doubt over achieving a density of development in keeping with the character of the locality for example and how individual access/parking and amenity space can be achieved. The illustrative plan also showed 4 of the dwellings being provided as affordable, (3 for social rent and 1 in shared ownership).

6.4 Subsequent to the Planning Officer’s report which initially advised on the entering into a Section 106 agreement for various contributions including 40% affordable housing

provision, an addendum to the Planning Officer's report was provided. This detailed the then change in Planning Policy following the Ministerial Statement 28<sup>th</sup> November 2014 that such contributions should not be sought on small scale developments of 10 units or less and which have a combined floor space of 1000 square metres. However, condition 3 was still applied showing the market housing detail.

- 6.5 The application was made in outline only, and as such whilst it is acceptable to request an illustrative layout, it is not considered reasonable to have requested at the time in condition 3 that the development be carried out in accordance with the detail of this plan, including affordable housing which was at the time of decision no longer required. The plan was for illustrative purposes only. The final detail of layout would be agreed in a subsequent reserved matters application.
- 6.6 It is therefore considered that the condition is not necessary, reasonable or enforceable in its current form and as such should be agreed to be varied, to omit the illustrative plan and to refer to the location and highways plan submitted only.

**2) Whether the removal of conditions 5, 6, 8, 12, 13, 14, 15 and 17 of the permission is acceptable?**

- 6.7 **Condition 5** states:-

*Prior to the first occupation of the development hereby approved, Travel Information Packs are to be developed for each dwelling and approved in writing by the Local Planning Authority in consultation with the Highway Authority.*

*Reason: To promote the use of sustainable forms of transport in accordance with the NPPF.*

- 6.8 Following further consultation with Highways (OCC) this requirement for Travel Information Packs should not be made on sites of under 10 dwellings. This aside, the site is considered to be in a relatively sustainable location and as such the condition is not considered necessary or reasonable and its removal is therefore considered to be acceptable

- 6.9 **Condition 6** states:-

*The detailed internal layout shall accord with OCC Manual for Streets principles, including servicing/emergency vehicle access/egress, and constructed to adoptable standards, unless otherwise approved in writing by the Local Planning Authority.*

*Reason: To ensure the development provides for adequate parking and vehicular access in accordance with Policy DC5 of the adopted Vale of White Horse Local Plan and the NPPF.*

The condition is recommended for removal on the basis that the application was made in outline, and the internal layout would be considered at the reserved matters stage. Manual for Streets is not an OCC document as referred to in the condition, but a national document produced jointly by DfT and DfCLG.

The condition is not considered necessary, reasonable, enforceable or precise.

- 6.10 **Condition 8** states:-

*Unless otherwise approved in writing by the Local Planning Authority, prior to the commencement of the development details of a refuse collection point next to Orchard Way shall be submitted to and approved in writing by the Local Planning Authority.*

*Reason: To ensure adequate provision for the management and collection of waste in accordance with Policy DC7 of the adopted Vale of White Horse Local Plan.*

The condition is recommended for removal, as it refers to a detailed matter and the application was made in outline.

The condition is therefore not considered to be necessary.

**6.11 Condition 12 states:-**

*Con 12*

*Prior to the commencement of the development hereby approved, a non-Motorised Users Audit (NMUA) to be submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority.*

*Reason: To identify pedestrian and cycle connectivity to the amenities in the village and promote sustainable forms of transport in accordance with the NPPF.*

The condition achieves nothing other than provision of a document. It would not, as the reason suggests, promote sustainable forms of transport. NMUAs are used to inform travel plans and advise appropriate improvements that may be required.

The condition is therefore not necessary or reasonable and it is recommended that it be removed.

**6.12 Condition 13 states:-**

*Prior to the commencement of works on the development hereby approved, a scheme ("the offsetting scheme") for the offsetting of biodiversity impacts at the site shall be submitted to and agreed in writing by the Local Planning Authority. The offsetting scheme shall include:*

- 1. A methodology for the identification of receptor site(s);*
- 2. The identification of receptor site(s);*
- 3. Details of the offset requirements of the development (in accordance with the recognised offsetting metrics standard outlined in the Defra Metrics Guidance dated March 2012);*
- 4. The provision of arrangements to secure the delivery of the offsetting measures (including a timetable for their delivery); and*
- 5. A management and monitoring plan (to include for the provision and maintenance of the offsetting measures in perpetuity [for no less than 25 years]).*

*The written approval of the LPA will not be issued before the arrangements necessary to secure the delivery of the off-setting measures have been executed. The offsetting scheme shall be implemented in full.*



*Reason: To ensure biodiversity losses are adequately mitigated off-site in accordance with the NPPF.*

The Countryside Officer has advised that any ecological impacts of the scheme could be dealt with through detailed design at the reserved matters application. The condition is therefore not necessary or reasonable.

**6.13 Condition 14** states:-

*Unless otherwise agreed in writing by the Local Planning Authority, the row of trees forming the internal line adjacent to the western boundary shall be retained in any layout presented at reserved matters stage.*

*Reason: These trees add depth to the boundary treatment, contribute to a linear woodland strip that lines the footpath, and are important in maintaining the landscape character of the site. They should therefore be retained in accordance with Policy NE9 of the adopted Vale of White Horse Local Plan and the NPPF.*

It is considered that condition 14 would have met the necessary tests in that the group of trees would maintain the landscape character of the site. Since the Forestry Officer provided comments on removal of the condition, a Tree Preservation Order was being prepared with regard to retention of these trees, and the advice was at time of writing that this was likely to be confirmed at the time of the Committee Meeting 28<sup>th</sup> October 2015. In light of this, as the trees would be afforded adequate protection under the group TPO, verbally the Forestry Officer has indicated that they would now have no objection to the removal of the condition.

It is therefore recommended that the condition be removed.

**6.14 Condition 15** states:-

*Unless otherwise agreed in writing by the Local Planning Authority, the first floor windows in eastern elevation of Plots 1 and 6 shall be obscure glazed and fixed shut to a height of 1.7 metres to the satisfaction of the Local Planning Authority.*

*Reason: To avoid undue overlooking of neighbouring dwellings in accordance with Policy DC9 of the adopted Vale of White Horse Local Plan.*

As the application was in outline, the layout plan submitted was for illustrative purposes only. Issues of layout and detailed design were reserved matters, and as such would be considered at the subsequent reserved matters stage.

It is therefore considered that the condition was not necessary or reasonable and as such should be removed.

**6.15 Condition 17** states:-

*Unless otherwise agreed in writing by the Local Planning Authority, prior to the first occupation of the development hereby approved, a footway shall be provided through the site linking with the informal path along the western boundary of the site to the satisfaction of the Local Planning Authority.*

*Reason: In the interests of pedestrian safety, site permeability, and to ensure adequate foot access through the site is provided for local residents and school children in accordance with Policies DC1 and DC5 of the adopted Vale of White Horse Local Plan.*

Paragraph 6.16 of the Officers report with regard to the initial application stated that:

*“The site is currently used as an informal route to the walkway to the west of the site, and both the Parish Council and local residents have expressed a desire to see this route maintained. It is considered that the provision of such a route through the site would be beneficial in site permeability terms. Officers have asked the applicant whether they would be willing to provide such a walkway however they are unwilling to do so. Officers consider that whilst regrettable, it is not possible to insist on such a footway through the site”-*

The condition was added at the request of the Planning Committee, however the condition would fail to meet the tests as the foot link is not necessary, and the request would not therefore be reasonable.

It is recommended therefore that the condition be removed.

**3)Whether there is now the Local Planning Authority would be in a reasonable position to request an element of affordable housing provision(following changes in guidance since the initial application was approved).**

- 6.16 At the time of the date of decision notice 12<sup>th</sup> February 2015, and following the Ministerial Statement 28<sup>th</sup> November 2014 that contributions should not be sought on small scale developments of 10 units or less, no affordable housing or other contribution was required by way of section106 agreement.

This position has now changed on the outcome of a High Court judgement (31<sup>st</sup> July 2015) which found in favour of West Berkshire District and Reading Borough Council. Planning Practice Guidance now once again permits the requirement for affordable housing provision and contributions on small scale sites such as this.

- 6.17 It would be considered that the Local Planning Authority could be acting unreasonably however to now insist upon such a provision, when the application before them now relates to conditions which could be deemed to have been applied which do not meet the tests, at a time when affordable housing and other contributions was not required on such small sites, and as the scheme is not materially different from that previously approved.

**7.0 CONCLUSION**

- 7.1 Following further consultation with specialist officers (including Highways, Forestry, Countryside) who provided comment on the initial application, and a review of the conditions attached to application P14/V2286/O against the tests outlined in the NPPF, it is considered that the application to vary condition 3 and remove conditions 5, 6, 8, 12, 13, 14, 15 and 17 is acceptable given that the conditions are considered to fail to meet the tests as outlined above.

**8.0 RECOMMENDATION**

**That the Section 73 application to vary Condition 3 of P14/V2286/O and remove conditions 5, 6, 8, 12, 13, 14, 15, 17 is approved subject to retention of the**

following conditions:

1. Time limit.
2. Reserved matters application to be submitted.
3. In accordance with approved plans (varied to remove 286.101 A).
4. Drainage scheme to be submitted, approved implemented in accordance with details agreed.
5. Construction management plan to be submitted to, agreed and implemented in accordance with details agreed.
6. Archaeological written scheme of investigation submitted and approved in writing prior to commencement of development.
7. Following the written scheme of investigation (WSI) a staged programme of archaeological evaluation and mitigation shall be carried out in accordance with the WSI, archive to be produced and submitted to the local planning authority.
8. Recommendations in ecological assessment of October 2014 to be followed.

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